



The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner



Paul Beroney
d/b/a Beroney's Auto Body
130-A Wight Street
Berlin, NH 03570

**ADMINISTRATIVE ORDER
No. WMD 04-16**

December 7, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Paul Beroney d/b/a Beroney's Auto Body pursuant to RSA 147-A:14 and RSA 149-M:15, I. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Paul Beroney is an individual doing business as Beroney's Auto Body and having a mailing address of 130-A Wight Street, Berlin, NH 03570.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100 – 1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
3. N. Richard Persons Trust is the record owner of land at 130-A Wight Street, Berlin, NH, more particularly described in a deed recorded in the Coos County Registry of Deeds at Book 911, Page 89, and identified on Berlin Tax Map 109 as Lot 89 ("the Site").
4. On September 19, 2003, DES received a complaint alleging that junk automobiles were leaking at the Site and that wastes generated at the Site were not being managed properly.

5. On October 27, 2003, DES personnel conducted a non-notifier inspection ("Inspection") of Paul Beroney d/b/a Beroney's Auto Body ("Beroney") at the Site. The purpose of the Inspection was to determine Beroney's compliance status relative to RSA 147-A, RSA 149-M, the Hazardous Waste Rules, and the Solid Waste Rules.

6. During the Inspection, DES personnel learned that Beroney's has been operating an auto repair and towing company at the Site for approximately five years and Beroney's has been accepting junk vehicles and scrap metal, crushing and/or otherwise processing junk vehicles and scrap metal at the Site.

7. During the Inspection, DES personnel observed the following:

- a. Five 55-gallon used oil drums were not sealed or labeled;
- b. A rainbow sheen was noted on several puddles in the vehicle crushing area as well as several areas of oil stained soil;
- c. Piles of scrap wire which Beroney stated he accepted from a local mill; and
- d. Approximately 400 scrap tires stored at the rear of the building.

8. Env-Wm 402.06(c) classifies used oil as a New Hampshire generic industrial process waste (hazardous waste) with the hazardous waste number of NH01.

9. RSA 147-A: 2, VI defines "[hazardous waste] generator" as "any person who owns or operates a facility where hazardous waste is generated."

10. During the Inspection, DES personnel learned that Beroney generates approximately 55-gallons of used oil each year.

11. Beroney is a generator of hazardous waste as defined by RSA 147-A:2, VI.

12. Env-Wm 504.02(f) requires that a generator notify DES, using a declassification request form, within 7 days after ceasing hazardous waste activities at a particular site.

13. A review of DES files shows that Beroney is a notified generator at 177 Glen Avenue, Berlin, NH ("Glen Avenue Site"), having been assigned EPA identification number NHD510096506. Beroney no longer operates his business at the Glen Avenue Site.

14. At the time of the Inspection, a review of DES files showed that Beroney had not declassified the Glen Avenue Site.

15. Env-Wm 807.06(b)(6) requires used oil generators to manage containers of used oil in such a manner as to prevent spillage, seepage, or other discharge of used oil into storm or sanitary sewers, onto the land, or into ground or surface waters.

16. Beroney did not prevent spillage of used oil at the Site.
17. Env-Wm 513.02(a) requires that hazardous waste generators "...shall be responsible for the cleanup of any hazardous waste discharge or any discharge of a material which, when discharged, becomes a hazardous waste."
18. The stained soil and the sheen on the puddle noted during the Inspection represent a discharge of hazardous waste that requires the generator to clean up the discharge.
19. Env-Wm 807.06(b)(4) requires used oil generators to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle" at all times during accumulation and storage.
20. The containers of used oil noted during the Inspection were not labeled.
21. Env-Wm 807.06(b)(5) requires used oil generators to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container.
22. The containers of used oil noted during the Inspection were not closed and sealed. The containers of used oil were not being actively used during the Inspection.
23. Env-Wm 807.06(b)(11) requires used oil generators to deliver used oil to an authorized facility.
24. During the Inspection, Beroney informed DES personnel that C&S Vending, A&D Excavating, and GM's Tire & Alignment, Inc. picked up used oil generated at the Site to burn in waste oil burners.
25. A review of DES files shows that the companies identified in paragraph C.24 have not notified DES as used oil burners and are therefore not authorized to accept used oil.
26. Env-Wm 807.06(b)(12) requires that used oil be transported by a New Hampshire registered hazardous waste transporter using a three copy bill of lading.
27. A review of DES files shows that the companies identified in paragraph C.24 are not registered hazardous waste transporters in New Hampshire.
28. Beroney informed DES personnel that it does not use a bill of lading for used oil transported from the Site.
29. Env-Wm 801.02(c) defines "used oil marketer" as "any person who engages in the act of marketing [used oil]".
30. Env-Wm 807.08(a)(1)a. specifies that generators who market used oil directly to a burner shall be deemed to be a used oil marketer.

31. Beroney is a used oil marketer.
32. Env-Wm 807.09(b)(1) requires used oil marketers to notify DES of its used oil marketing activities.
33. A review of DES files shows that Beroney has not notified DES of its used oil marketing activities.
34. RSA 149-M:4, XXII defines "solid waste" in part, as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."
35. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."
36. The scrap tires and scrap wire observed by DES personnel at the Site are solid wastes as defined by RSA 149-M:4, XXII.
37. Env-Wm 2605.02(b) requires tires that are stored outdoors to be stored in one of the following manners:
 - a. In covered trailers;
 - b. In transfer containers; or
 - c. In stockpiles as follows:
 - (1) The diameter of the piles shall not exceed 25 feet;
 - (2) The height of the piles shall not exceed 15 feet;
 - (3) Fire lanes no less than 25 feet in width shall be maintained around each pile;
 - (4) Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolytic oils or other liquids generated by fire; and
 - (5) The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.
38. The tires observed during the Inspection at the Site were not stored in accordance with Env-Wm 2605.02(b).
39. On November 4, 2003, DES personnel conducted a follow-up inspection of the Site. DES personnel observed or learned the following:
 - a. The used oil drums observed during the Inspection were not labeled or sealed;
 - b. Approximately 300 scrap tires had been removed from the Site;
 - c. The rainbow sheen observed on the puddles during the Inspection had been cleaned-up using spill pads; and
 - d. The stained soil had been scraped up and placed in the junk vehicles at the Site.

40. As a result of the October 27, 2003 and November 4, 2003 inspections, DES personnel issued a Report of Initial Complaint Investigation ("RICI") to Beroney advising him to cease operating an unpermitted solid waste facility; remove all petroleum contaminated soil and deliver it to a permitted waste disposal facility; seal all used oil containers; label all used oil containers; provide used oil to notified used oil burners; either self-transport or use a registered hazardous waste transporter to deliver used oil to an authorized facility; ensure that a bill of lading is used for used oil shipments and retain copies for three years; declassify his former business at the Glen Site; and to store tires in accordance with the solid waste rules.

41. As a result the Inspection, DES issued Letter of Deficiency No. WMD 03-037 ("LOD") to Beroney on November 19, 2003, advising him to cease operating an unpermitted solid waste facility; store all tires at the Site in accordance with the Solid Waste Rules; submit a declassification form to DES for the Glen Avenue Site; deliver used oil to an authorized facility using a bill of lading and to maintain copies of bills of lading for three years; ensure that used oil is transporter using a registered hazardous waste transporter or self-transport used oil in accordance with Env-Wm 807.07(a); remediate petroleum contaminated soil; label containers of used oil; and seal containers of used oil.

42. A review of DES files shows that Beroney submitted a declassification form to DES on November 24, 2003, for the Glen Avenue Site.

43. On January 26, 2004, DES personnel conducted a follow-up inspection of the Site. DES personnel noted that the scrap tires at the Site were not stored in accordance with the Solid Waste Rules.

44. On March 5, 2004, DES personnel conducted a follow-up inspection of the Site. DES personnel observed that the only used oil drum at the Site was labeled. The scrap tires at the Site were not stored in accordance with the Solid Waste Rules..

45. On September 17, 2004, DES personnel conducted a follow-up inspection of the Site. DES personnel observed or learned the following:

- a. Lead-acid batteries, some of which were not intact, were stored outdoors in the bed of a pickup truck;
- b. Three used oil drums, two of which were not labeled and one was not sealed;
- c. An unsealed and unlabeled container of waste antifreeze; and
- d. Approximately 300 scrap tires which were not stored in accordance with the Solid Waste Rules.

46. Env-Wm 809.02 states "persons who generate or collect spent lead-acid batteries destined for reclamation shall store the batteries in a manner designed to ensure that the battery housings do not break or leak acid onto the soil or into any groundwaters or surface waters."

47. The lead-acid batteries observed by DES personnel at the Site were not stored in a manner to prevent leakage onto the soil or into groundwaters.

48. Env-Wm 110.01(c)(142) defines "universal waste" as "any of the following hazardous wastes that may be managed in accordance with Env-Wm 1100 in lieu of Env-Wm 300 through Env-Wm 700: batteries; pesticides; mercury-containing devices; lamps; cathode ray tubes; and antifreeze."

49. The container of antifreeze noted during the Inspection is a universal waste as defined by Env-Wm 110.01(c)(142).

50. Env-Wm 110.01(c)(143) defines "universal waste handler" as "a generator of universal waste".

51. Beroney is a universal waste handler as defined by Env-Wm 110.01(c)(143).

52. Env-Wm 1102.03(c)(1) requires universal waste handlers to keep containers of universal waste closed except when universal waste is being added to or removed from the container.

53. The container of antifreeze noted during the Inspection was not closed. The container of antifreeze was not being actively used during the Inspection.

54. Env-Wm 1114.04 requires universal waste handlers to label containers of antifreeze with any or all of the following: "Universal Waste-Antifreeze"; "Waste Antifreeze"; or "Used Antifreeze".

55. The container of antifreeze noted during the Inspection was not labeled.

56. On October 13, 2004, DES conducted a follow-up inspection of the Site. DES observed or learned the following:

- a. The containers of used oil and antifreeze were labeled;
- b. The container of antifreeze was not closed;
- c. The lead-acid batteries remained at the Site; and
- d. Some of the scrap tires had been removed and the remaining scrap tires were not stored in accordance with the Solid Waste Rules.

D. DETERMINATION OF VIOLATIONS

1. Beroney has violated Env-Wm 504.02(f) by failing to submit a declassification request form to DES within 7 days of ceasing hazardous waste activities at the Glen Site. **This violation has been corrected.**

2. Beroney has violated Env-Wm 513.02(a) by failing to remediate a discharge of hazardous waste. **This violation has been corrected.**

3. Beroney has violated Env-Wm 807.06(b)(4) by failing to clearly label all containers of used oil destined for recycle with the words "Used Oil for Recycle." **This violation has been corrected.**

4. Beroney has violated Env-Wm 807.06(b)(5) by failing to ensure containers used to store used oil for recycle are sealed at all times unless actively adding waste to or removing waste from the container. **This violation has been corrected.**
5. Beroney has violated Env-Wm 807.06(b)(6) by failing to prevent discharges of used oil to the soil.
6. Beroney has violated Env-Wm 807.06(b)(11) by failing to deliver used oil to an authorized facility.
7. Beroney has violated Env-Wm 807.06(b)(12) by failing to use a registered hazardous waste transporter to transport used oil.
8. Beroney has violated Env-Wm 807.06(b)(12) by failing to use a 3 part bill of lading when shipping used oil off-site.
9. Beroney has violated Env-Wm 807.09(b)(1) by failing to notify DES as a marketer of used oil.
10. Beroney has violated Env-Wm 809.02 by failing to store lead-acid batteries in a manner to prevent leakage and breakage.
11. Beroney has violated Env-Wm 1102.03(c)(1) by failing to close containers of universal waste, specifically waste antifreeze.
12. Beroney has violated Env-Wm 1114.04 by failing to label containers of universal waste, specifically waste antifreeze. **This violation has been corrected.**
13. Beroney has violated Env-Wm 2605.02(b) by failing to comply with tire storage standards.

E. ORDER

Based on the above findings, DES hereby orders Beroney as follows:

1. **Immediately** ensure that used oil is managed in such a manner so as to prevent discharges to the soil.
2. **Immediately** ensure that used oil is delivered to an authorized facility or used oil burner.
3. **Immediately** ensure that used oil is transported to an authorized facility using a registered hazardous waste transporter. Used oil may also be self-transported in accordance with Env-Wm 807.07(a).
4. **Immediately** ensure that used oil is transported to an authorized facility using a bill of lading which contains all the information required by Env-Wm 807.06(b)(13) and that bills of lading are kept on site for three years.

5. **Within 15 days** the date of this Order, notify DES as a marketer of used oil by completing and submitting a New Hampshire hazardous waste notification form to DES. If Paul Beroney d/b/a Beroney's Auto Body intends to obtain a used oil burner for the Site, Paul Beroney d/b/a Beroney's Auto Body shall notify DES as a used oil burner by completing and submitting a New Hampshire hazardous waste notification form to DES.

6. **Immediately** ensure that all lead-acid batteries are stored in a manner to prevent leakage and breakage.

7. **Immediately** ensure that all universal waste containers, specifically waste antifreeze, are sealed.

8. **Within 30 days** the date of this Order, store tires in accordance with Env-Wm 2605.02(b) of the New Hampshire Solid Waste Rules, until such time as the tires can be removed to a permitted solid waste facility.

9. Submit one written status report to DES **within 45 days** the date of this Order, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and **copies of disposal receipts.**

10. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

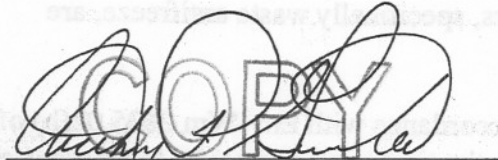
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F. APPEAL

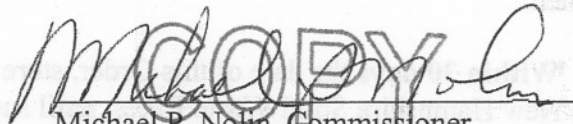
Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Beroney of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 147-A and RSA 149-M provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Beroney remains obligated to comply with all applicable requirements, in particular RSA 147-A and RSA 149-M. DES will continue to monitor Beroney's compliance with applicable requirements and will take appropriate action if additional violations are discovered.



Anthony P. Giunta, P.G., Director
Waste Management Division



Michael P. Nolin, Commissioner
Department of Environmental Services

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